



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-0077/5

MGG:kjf

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2007 BILL

Regen

1 AN ACT *to repeal* 101.123 (1) (br), 101.123 (1) (c), 101.123 (1) (dg), 101.123 (1)
2 (j), 101.123 (2) (a) 5., 101.123 (2) (am), 101.123 (2) (b), 101.123 (3) (a) to (gr),
3 101.123 (4), 101.123 (5) (b), 101.123 (6) (title), 101.123 (7) (title), 101.123 (8) (b)
4 and 101.123 (8) (c); *to renumber* 101.123 (1) (a), 101.123 (1) (dm) and 101.123
5 (2) (c); *to renumber and amend* 101.123 (1) (e), 101.123 (1) (h), 101.123 (2) (a)
6 10., 101.123 (2) (ar), 101.123 (2) (bm), 101.123 (2) (br), 101.123 (2) (bv), 101.123
7 (6), 101.123 (7) and 101.123 (8); *to consolidate, renumber and amend*
8 101.123 (5) (intro.) and (a); *to amend* 77.52 (2) (ag) 39. (intro.), 101.123 (title),
9 101.123 (1) (am), 101.123 (1) (b), 101.123 (1) (d), 101.123 (1) (f), 101.123 (1) (g),
10 101.123 (1) (i), 101.123 (2) (a) (intro.), 101.123 (3) (intro.), 165.60, 165.755 (1)
11 (b), 302.46 (1) (a), 460.01 (5), 757.05 (1) (a) and 814.63 (1) (c); *to repeal and*
12 *recreate* 101.123 (2) (title), 101.123 (2) (a) 1., 101.123 (2) (a) 4., 101.123 (2) (a)
13 6., 101.123 (2) (a) 9. and 101.123 (5) (title); and *to create* 101.123 (1) (ab),
14 101.123 (1) (ac), 101.123 (1) (aj), 101.123 (1) (bn), 101.123 (1) (dj), 101.123 (1)

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1 (im), 101.123 (1) (k) 2., 101.123 (1) (k) 3., 101.123 (2) (a) 2m., 101.123 (2) (a) 2r.,
2 101.123 (2) (a) 5m., 101.123 (2) (a) 5t., 101.123 (2) (a) 7m., 101.123 (2) (a) 8g.,
3 101.123 (2) (d) (intro.), 101.123 (2m), 101.123 (3) (h), 101.123 (3) (i), 101.123 (3)
4 (j), 101.123 (3) (k), 101.123 (3m), 101.123 (4m) (title), 101.123 (8) (d), 101.123
5 (8) (e) and 101.123 (8) (f) of the statutes; **relating to:** prohibiting smoking and
6 the use of chewing tobacco in places of employment, restaurants, taverns, and
7 other indoor areas and prohibiting the use of chewing tobacco at certain outdoor
8 locations and providing a penalty.

Analysis by the Legislative Reference Bureau***Prohibition against smoking***

Current law prohibits smoking in most indoor areas that are accessible to the public unless there has been a specific area that has been designated a smoking area. Under this bill, designated smoking areas may no longer be permitted in any public place or place of employment with exceptions for private residences, designated rooms in lodging establishments, and certain retirement homes. The bill defines "a place of employment" to be any indoor area that employees normally frequent during the course of employment such as an office, a work area, an employee lounge, a restroom, a conference room, a meeting room, a classroom, or a hallway. Other locations where smoking areas may no longer be permitted under the bill, regardless of whether they meet the definition of "place of employment," include the following:

1. Mass transit vehicles and school buses.
2. Schools and other educational facilities.
3. Residence halls and dormitories of colleges and universities.
4. Day care centers.
5. Inpatient health care facilities, such as community-based residential facilities and nursing homes.
6. Prisons, jails, and juvenile correctional facilities.
7. Mental health institutions and hospitals where the primary purpose is the treatment of mental illness, alcoholism, or drug abuse.
8. Centers for the developmentally disabled.
9. Restaurants and taverns, as described below.
10. Retail establishments.
11. Public waiting rooms.
12. Governmental buildings.

Current law also provides exceptions from the prohibition against smoking for bowling centers, halls used for private functions, for rooms in which the main

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occupants are smokers, and for areas of facilities that are used to manufacture or assemble goods, products, or merchandise. This bill eliminates these exceptions.

Current law allows smoking in any restaurant that has a seating capacity of 50 individuals or less, or that holds a liquor license, if the sale of alcohol beverages accounts for more than 50 percent of the restaurant's receipts. This bill prohibits smoking in any restaurant regardless of seating capacity or the number of liquor sale receipts.

Current law allows smoking in any tavern holding a "Class B" intoxicating liquor license or Class "B" fermented malt beverages license, issued by a municipality (liquor license). This bill prohibits smoking in any tavern.

Prohibition against chewing tobacco

This bill expands the prohibitions against smoking that are in current law and in this bill to include a prohibition against the chewing of tobacco.

Enforcement

X This bill requires persons in charge of places where the use of tobacco products is prohibited to ~~not~~ enforce the prohibitions by taking certain steps to ensure compliance, such as asking the person to leave or refusing to serve the person if the place is a restaurant or tavern. This bill imposes fines on persons in charge who are business operators and who fail to take these measures. The bill also imposes fines on persons using tobacco products in violation of the law.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 **SECTION 1.** 77.52 (2) (ag) 39. (intro.) of the statutes is amended to read:
- 2 77.52 (2) (ag) 39. (intro.) Equipment in offices, business facilities, schools, and
- 3 hospitals but not in residential facilities including personal residences, apartments,
- 4 long-term care facilities, as defined under s. 16.009 (1) (em), state institutions, as
- 5 defined under s. 101.123 (1) (i), prisons, mental health institutions, as defined in s.
- 6 51.01 (12), centers for the developmentally disabled, as defined in s. 51.01 (3), Type

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1 1 secured juvenile correctional facilities, as defined in s. 938.02 (19), or similar
2 facilities including, by way of illustration but not of limitation, all of the following:

3 **SECTION 2.** 101.123 (title) of the statutes is amended to read:

4 **101.123 (title) Smoking Using tobacco products prohibited.**

5 **SECTION 3.** 101.123 (1) (a) of the statutes is renumbered 101.123 (1) (ag).

6 **SECTION 4.** 101.123 (1) (ab) of the statutes is created to read:

7 101.123 (1) (ab) "Business operator" means the owner or lessee of a business,
8 as defined in s. 84.072 (1) (a).

9 **SECTION 5.** 101.123 (1) (ac) of the statutes is created to read:

10 101.123 (1) (ac) "Correctional facility" means any prison, juvenile correctional
11 facility, or any other correctional facility that is used to incarcerate persons convicted
12 of crimes or adjudged delinquent but does not include a facility that is the private
13 residence of the incarcerated person at which no one is employed to insure the
14 person's incarceration.

15 **SECTION 6.** 101.123 (1) (aj) of the statutes is created to read:

16 101.123 (1) (aj) Notwithstanding s. 101.01 (5), "employment" means any trade,
17 occupation, or process of manufacture or any method of carrying on such trade,
18 occupation, or process of manufacture in which any person may be engaged.

19 **SECTION 7.** 101.123 (1) (am) of the statutes is amended to read:

20 101.123 (1) (am) "Hospital" has the meaning given in s. 50.33 (2), except that
21 "hospital" does not include a nursing home licensed under s. 50.03 that is operated
22 in connection with a hospital ~~or a retirement home that is operated in connection~~
23 ~~with a hospital.~~

24 **SECTION 8.** 101.123 (1) (b) of the statutes is amended to read:

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1 101.123 (1) (b) "Inpatient health care facility" means a hospital, a county home
2 established under s. 49.70, a county infirmary established under s. 49.72 ~~or~~, a
3 community-based residential facility or a nursing home licensed under s. 50.03.

4 **SECTION 9.** 101.123 (1) (bn) of the statutes is created to read:

5 101.123 (1) (bn) "Lodging establishment" means any of the following:

6 1. A bed and breakfast establishment, as defined in s. 254.61 (1).

7 2. A hotel, as defined in s. 254.61 (3).

8 3. A tourist rooming house, as defined in s. 254.61 (6).

9 **SECTION 10.** 101.123 (1) (br) of the statutes is repealed.

10 **SECTION 11.** 101.123 (1) (c) of the statutes is repealed.

11 **SECTION 12.** 101.123 (1) (d) of the statutes is amended to read:

12 101.123 (1) (d) "Person in charge" means ~~the~~ a business operator or other
13 person who ultimately controls, governs or directs the activities ~~aboard a public~~
14 conveyance or within a place at a location where ~~smoking~~ using tobacco products is
15 ~~prohibited or regulated under this section, regardless of the person's status as owner~~
16 or lessee.

17 **SECTION 13.** 101.123 (1) (dg) of the statutes is repealed.

18 **SECTION 14.** 101.123 (1) (dj) of the statutes is created to read:

19 101.123 (1) (dj) Notwithstanding s. 101.01 (11), "place of employment" means
20 any indoor area that employees normally frequent during the course of employment,
21 including an office, a work area, an employee lounge, a restroom, a conference room,
22 a meeting room, a classroom, a hallway, a stairway, a vehicle, or a cafeteria that is
23 provided by the employer.

24 **SECTION 15.** 101.123 (1) (dm) of the statutes is renumbered 77.51 (11m)

BILL**SECTION 16**

1 **SECTION 16.** 101.123 (1) (e) of the statutes is renumbered 101.123 (1) (cm) and
2 amended to read:

3 101.123 (1) (cm) ~~“Public conveyance”~~ “Passenger vehicle” means a mass transit
4 vehicles vehicle as defined by in s. 340.01 (28m), a motor bus as defined in s. 340.01
5 (31), and a school buses bus as defined by in s. 340.01 (56).

6 **SECTION 17.** 101.123 (1) (f) of the statutes is amended to read:

7 101.123 (1) (f) “Restaurant” means an establishment as defined in s. 254.61 (5)
8 ~~with a seating capacity of more than 50 persons.~~

9 **SECTION 18.** 101.123 (1) (g) of the statutes is amended to read:

10 101.123 (1) (g) “Retail establishment” means any store or shop in which retail
11 sales is the principal business conducted, ~~except a tavern operating under a “Class~~
12 ~~B” intoxicating liquor license or Class “B” fermented malt beverages license, and~~
13 ~~except bowling centers.~~

14 **SECTION 19.** 101.123 (1) (h) of the statutes is renumbered 101.123 (1) (k) (intro.)
15 and amended to read:

16 101.123 (1) (k) (intro.) ~~“Smoking”~~ “Using tobacco products” means carrying any
17 of the following:

18 1. Burning or holding a lighted cigar, cigarette, pipe, or any other lighted
19 smoking equipment.

20 **SECTION 20.** 101.123 (1) (i) of the statutes is amended to read:

21 101.123 (1) (i) “State institution” means ~~a prison~~, a mental health institute as
22 defined in s. 51.01 (12) or a center for the developmentally disabled as defined in s.
23 51.01 (3).

24 **SECTION 21.** 101.123 (1) (im) of the statutes is created to read:

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1 101.123 (1) (im) "Tavern" means an establishment, other than a restaurant,
2 that holds a "Class B" intoxicating liquor license or Class "B" fermented malt
3 beverages license.

4 **SECTION 22.** 101.123 (1) (j) of the statutes is repealed.

5 **SECTION 23.** 101.123 (1) (k) 2. of the statutes is created to read:

6 101.123 (1) (k) 2. Inhaling or exhaling smoke from a lighted cigar, cigarette,
7 pipe, or other lighted smoking equipment.

8 **SECTION 24.** 101.123 (1) (k) 3. of the statutes is created to read:

9 101.123 (1) (k) 3. Using chewing tobacco.

10 **SECTION 25.** 101.123 (2) (title) of the statutes is repealed and recreated to read:

11 101.123 (2) (title) PROHIBITION AGAINST USING TOBACCO PRODUCTS IN INDOOR
12 PLACES.

13 **SECTION 26.** 101.123 (2) (a) (intro.) of the statutes is amended to read:

14 101.123 (2) (a) (intro.) Except as provided in sub. (3), no person may smoke
15 engage in using tobacco products in any of the following indoor places:

16 **SECTION 27.** 101.123 (2) (a) 1. of the statutes is repealed and recreated to read:

17 101.123 (2) (a) 1. Passenger vehicles.

18 **SECTION 28.** 101.123 (2) (a) 2m. of the statutes is created to read:

19 101.123 (2) (a) 2m. Residence halls or dormitories of universities or colleges.

20 **SECTION 29.** 101.123 (2) (a) 2r. of the statutes is created to read:

21 101.123 (2) (a) 2r. Day care centers.

22 **SECTION 30.** 101.123 (2) (a) 4. of the statutes is repealed and recreated to read:

23 101.123 (2) (a) 4. Theaters.

24 **SECTION 31.** 101.123 (2) (a) 5. of the statutes is repealed.

25 **SECTION 32.** 101.123 (2) (a) 5m. of the statutes is created to read:

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101.123 (2) (a) 5m. Lockup facilities, jails, or correctional facilities.

SECTION 33. 101.123 (2) (a) 5t. of the statutes is created to read:

101.123 (2) (a) 5t. State institutions.

SECTION 34. 101.123 (2) (a) 6. of the statutes is repealed and recreated to read:

101.123 (2) (a) 6. Elevators.

SECTION 35. 101.123 (2) (a) 7m. of the statutes is created to read:

101.123 (2) (a) 7m. Taverns.

SECTION 36. 101.123 (2) (a) 8g. of the statutes is created to read:

101.123 (2) (a) 8g. Lodging establishments except as provided in sub. (3m).

SECTION 37. 101.123 (2) (a) 9. of the statutes is repealed and recreated to read:

101.123 (2) (a) 9. Any indoor place, other than the places listed in subd. 1. to 8r., that is a place of employment or that is open to the public or to which the public is invited or has lawful access.

SECTION 38. 101.123 (2) (a) 10. of the statutes is renumbered 101.123 (2) (a) 8r. and amended to read:

101.123 (2) (a) 8r. ~~Any enclosed, indoor area of a state, county, city, village, or and~~
town building buildings ^{State}

SECTION 39. 101.123 (2) (am) of the statutes is repealed.

SECTION 40. 101.123 (2) (ar) of the statutes is renumbered 101.123 (2) (d) 1. and amended to read:

101.123 (2) (d) 1. ~~Notwithstanding par. (a) and sub. (3), no person may smoke in the state capitol building or in~~ In the immediate vicinity of the state capitol.

SECTION 41. 101.123 (2) (b) of the statutes is repealed.

SECTION 42. 101.123 (2) (bm) of the statutes is renumbered 101.123 (2) (d) 2. and amended to read:

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1 101.123 (2) (d) 2. ~~Notwithstanding par. (a) and sub. (3), no person may smoke~~
2 Outside on the premises, ~~indoors or outdoors~~, of a day care center when children who
3 are receiving day care services are present.

4 **SECTION 43.** 101.123 (2) (br) of the statutes is renumbered 101.123 (2) (d) 3. and
5 amended to read:

6 101.123 (2) (d) 3. ~~Notwithstanding par. (a) and sub. (3), no person may smoke~~
7 ~~in any enclosed, indoor area of a Type 1 juvenile correctional facility or on~~ On the
8 grounds of a Type 1 juvenile correctional facility, as defined in s. 938.02 (19).

9 **SECTION 44.** 101.123 (2) (bv) of the statutes is renumbered 101.123 (2) (d) 4. and
10 amended to read:

11 101.123 (2) (d) 4. ~~Notwithstanding par. (a) and sub. (3), no person may smoke~~
12 ~~in~~ A location that is 25 feet or less from a residence hall or dormitory that is owned
13 or operated by the Board of Regents of the University of Wisconsin System ~~or in any~~
14 ~~location that is 25 feet or less from such a residence hall or dormitory.~~

15 **SECTION 45.** 101.123 (2) (c) of the statutes is renumbered 101.123 (4m).

16 **SECTION 46.** 101.123 (2) (d) (intro.) of the statutes is created to read:

17 101.123 (2) (d) (intro.) No person may engage in using tobacco products at any
18 of the following outdoor locations:

19 **SECTION 47.** 101.123 (2m) of the statutes is created to read:

20 101.123 (2m) RESPONSIBILITY OF PERSONS IN CHARGE. (a) No person in charge
21 may allow any person to engage in using tobacco products in violation of sub. (2) at
22 a location that is under the control or direction of the person in charge.

23 (b) No person in charge may provide matches, ashtrays, or other smoking
24 equipment at the location where using tobacco products is prohibited.

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(c) A person in charge shall make reasonable efforts to prohibit persons from using tobacco products at a location where using tobacco products is prohibited by doing all of the following:

1. Posting signs ^{as required under sub. (5) and} ~~or~~ providing other appropriate notification of the prohibition.

2. Refusing to serve a person, if the person is using tobacco products in a restaurant or tavern.

3. Asking a person who is using tobacco products to refrain from using tobacco products and, if the person refuses to do so, asking the person to leave the location.

(d) If a person refuses to leave a location after being requested to do so as provided in par. (c) 3., the person in charge shall immediately notify an appropriate law enforcement agency of the violation.

(e) A person in charge may take measures in addition to those listed in par. (b) and (c) to prevent persons from being exposed to others using tobacco products or to further ensure compliance with this section.

SECTION 48. 101.123 (3) (intro.) of the statutes is amended to read:

101.123 (3) EXCEPTIONS. (intro.) The regulation of smoking prohibition against using tobacco products in sub. (2) (a) does not apply to the following places:

SECTION 49. 101.123 (3) (a) to (gr) of the statutes are repealed.

SECTION 50. 101.123 (3) (h) of the statutes is created to read:

101.123 (3) (h) A private residence.

SECTION 51. 101.123 (3) (i) of the statutes is created to read:

101.123 (3) (i) A room used by a person in a retirement home as his or her residence.

SECTION 52. 101.123 (3) (j) of the statutes is created to read:

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1 101.123 (3) (j) A room in a retirement home in which 2 or more persons reside
2 if every person that lives in that room uses tobacco products and each of those persons
3 has made a written request to the person in charge of the retirement home to be
4 placed in a room where using tobacco products is allowed.

5 **SECTION 53.** 101.123 (3) (k) of the statutes is created to read:

6 101.123 (3) (k) A room in a lodging establishment that has been designated as
7 a room where using tobacco products is allowed, as provided under sub. (3m).

8 **SECTION 54.** 101.123 (3m) of the statutes is created to read:

9 101.123 (3m) LODGING. The owner of a lodging establishment may designate
10 not more than 25 percent of the rooms in the lodging establishment as rooms in which
11 using tobacco products is permitted.

12 **SECTION 55.** 101.123 (4) of the statutes is repealed.

13 **SECTION 56.** 101.123 (4m) (title) of the statutes is created to read:

14 101.123 (4m) (title) LOCAL REGULATION.

15 **SECTION 57.** 101.123 (5) (title) of the statutes is repealed and recreated to read:

16 101.123 (5) (title) SIGNS.

17 **SECTION 58.** 101.123 (5) (intro.) and (a) of the statutes are consolidated,
18 renumbered 101.123 (5) (am) and amended to read:

19 101.123 (5) (am) The person in charge of a place in which using tobacco
20 products is prohibited or his or her agent shall: ~~(a) Post post signs identifying~~
21 ~~designated smoking areas; and~~ outlining the prohibitions against using tobacco
22 products, as specified in this section.

23 **SECTION 59.** 101.123 (5) (b) of the statutes is repealed.

24 **SECTION 60.** 101.123 (6) (title) of the statutes is repealed.

BILL**SECTION 61**

1 **SECTION 61.** 101.123 (6) of the statutes is renumbered 101.123 (5) (bn) and
2 amended to read:

3 101.123 (5) (bn) The department shall, by rule, specify uniform dimensions and
4 other characteristics of the signs used to designate smoking areas required under
5 par. (am). These rules may not require the use of signs that are more expensive than
6 is necessary to accomplish their purpose.

7 **SECTION 62.** 101.123 (7) (title) of the statutes is repealed.

8 **SECTION 63.** 101.123 (7) of the statutes is renumbered 101.123 (5) (c) and
9 amended to read:

10 101.123 (5) (c) The department shall arrange with the department of
11 administration to have the signs that are required under par. (am) prepared and
12 made available to state agencies for use in state facilities.

13 **SECTION 64.** 101.123 (8) of the statutes is renumbered 101.123 (8) (am) and
14 amended to read:

15 101.123 (8) (am) Any person who willfully violates sub. (2) (a), (am) 1., (bm),
16 (br), or (bv) after being advised by an employee of the facility that smoking in the area
17 is prohibited or any person in charge or his or her agent who willfully fails to comply
18 with sub. (5) shall forfeit be fined not less than \$10 and not more than \$10 \$100 per
19 offense.

20 **SECTION 65.** 101.123 (8) (b) of the statutes is repealed.

21 **SECTION 66.** 101.123 (8) (c) of the statutes is repealed.

22 **SECTION 67.** 101.123 (8) (d) of the statutes is created to read:

23 101.123 (8) (d) A business operator who violates sub. (2m) shall be fined as
24 follows:

25 1. Not less than \$50 nor more than \$100 for the first offense.

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1 2. Not less than \$100 nor more than \$200 for the 2nd offense.

2 3. Not less than \$200 nor more than \$500 for the 3rd or any subsequent offense.

3 **SECTION 68.** 101.123 (8) (e) of the statutes is created to read:

4 101.123 (8) (e) Each day that sub. (2m) is violated by a business operator is a
5 separate offense.

6 **SECTION 69.** 101.123 (8) (f) of the statutes is created to read:

7 101.123 (8) (f) There is no penalty for a violation of sub. (2m) by a person in
8 charge who is not a business operator and the penalty provision under s. 939.61 does
9 not apply to such a person in charge.

10 **SECTION 70.** 165.60 of the statutes is amended to read:

11 **165.60 Law enforcement.** The department of justice is authorized to enforce
12 ss. 101.123 (2), (5) (am), and (8), 944.30, 944.31, 944.33, 944.34, 945.02 (2), 945.03
13 (1m), and 945.04 (1m) and ch. 108 and is invested with the powers conferred by law
14 upon sheriffs and municipal police officers in the performance of those duties. This
15 section does not deprive or relieve sheriffs, constables, and other local police officers
16 of the power and duty to enforce those sections, and those officers shall likewise
17 enforce those sections.

18 **SECTION 71.** 165.755 (1) (b) of the statutes is amended to read:

19 165.755 (1) (b) A court may not impose the crime laboratories and drug law
20 enforcement surcharge under par. (a) for a violation of s. 101.123 (2) ~~(a)~~, ~~(am) 1.~~, ~~(ar)~~,
21 ~~(bm)~~, ~~(br)~~, or ~~(bv)~~ or (5) ~~(b)~~, for a first violation of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1.,
22 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the violation had a blood
23 alcohol concentration of 0.08 or more but less than 0.1 at the time of the violation,
24 or for a violation of a state law or municipal or county ordinance involving a

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1 nonmoving traffic violation, a violation under s. 343.51 (1m) (b), or a safety belt use
2 violation under s. 347.48 (2m).

3 **SECTION 72.** 302.46 (1) (a) of the statutes is amended to read:

4 302.46 (1) (a) If a court imposes a fine or forfeiture for a violation of state law
5 or for a violation of a municipal or county ordinance except for a violation of s. 101.123
6 (2) (a), ~~(am) 1., (ar), (bm), (br), or (bv)~~ or (5) (am), or for a first violation of s. 23.33 (4c)
7 (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed
8 the violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at
9 the time of the violation, or for a violation of state laws or municipal or county
10 ordinances involving nonmoving traffic violations, violations under s. 343.51 (1m)
11 (b), or safety belt use violations under s. 347.48 (2m), the court, in addition, shall
12 impose a jail surcharge under ch. 814 in an amount of 1 percent of the fine or
13 forfeiture imposed or \$10, whichever is greater. If multiple offenses are involved, the
14 court shall determine the jail surcharge on the basis of each fine or forfeiture. If a
15 fine or forfeiture is suspended in whole or in part, the court shall reduce the jail
16 surcharge in proportion to the suspension.

17 **SECTION 73.** 460.01 (5) of the statutes is amended to read:

18 460.01 (5) "Physician's office" ~~has the meaning given in s. 101.123 (1) (dg)~~
19 means a place, other than a residence or a hospital, that is used primarily to provide
20 medical care and treatment.

21 **SECTION 74.** 757.05 (1) (a) of the statutes is amended to read:

22 757.05 (1) (a) Whenever a court imposes a fine or forfeiture for a violation of
23 state law or for a violation of a municipal or county ordinance except for a violation
24 of s. 101.123 (2) (a), ~~(am) 1., (ar), (bm), (br), or (bv)~~ or (5) (am), or for a first violation
25 of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person

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1 who committed the violation had a blood alcohol concentration of 0.08 or more but
2 less than 0.1 at the time of the violation, or for a violation of state laws or municipal
3 or county ordinances involving nonmoving traffic violations, violations under s.
4 343.51 (1m) (b), or safety belt use violations under s. 347.48 (2m), there shall be
5 imposed in addition a penalty surcharge under ch. 814 in an amount of 26 percent
6 of the fine or forfeiture imposed. If multiple offenses are involved, the penalty
7 surcharge shall be based upon the total fine or forfeiture for all offenses. When a fine
8 or forfeiture is suspended in whole or in part, the penalty surcharge shall be reduced
9 in proportion to the suspension.

10 **SECTION 75.** 814.63 (1) (c) of the statutes is amended to read:

11 814.63 (1) (c) This subsection does not apply to an action for a violation of s.
12 101.123 (2) (a), ~~(am) 1., (ar), (bm), (br), or (bv)~~ or (5) (am), for a first violation of s. 23.33
13 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who
14 committed the violation had a blood alcohol concentration of 0.08 or more but less
15 than 0.1 at the time of the violation, or for a violation under s. 343.51 (1m) (b) or a
16 safety belt use violation under s. 347.48 (2m).

17 **SECTION 76. Effective date.**

18 (1) This act takes effect on the first day of the 7th month beginning after
19 publication.

20 (END)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0077/5dn
MGG&GMM:kjf:rs

February 23, 2007

Sarah Briganti:

1. As I reviewed the redraft instructions, I realized that the definition of "public place" that you requested comes from Georgia legislation. It is very difficult just to superimpose another state's legislation on existing Wisconsin legislation. I have included the concept of a public place in this redraft. See the repeal and recreation of s. 101.123 (2) (a) 9. I did not include any of the places listed in the Georgia definition because none of them seemed to be a place that would not either be a "place of employment" or a "place that is open to the public or to which the public is invited or has lawful access." Frankly it seems to me that every item listed under s. 101.123 (2) (a) under current law and in this draft is either a public place or a place of employment, or both, with the exception of passenger vehicles (because they are not indoor places) and some elevators. However, I have left the list because I am sure that interested parties would not want the entire list eliminated.

If you believe that any of these places listed in the definition of "public place" in the Georgia legislation are not indoor public places or indoor places of employment and that they should, therefore, be specifically listed in the draft as places where the use of tobacco products is prohibited, please let me know and we can discuss a different approach to this issue.

2. Under current law "indoor" and "enclosed" are not defined but may mean different things. I think an area can be "enclosed" without being "indoor," e.g., a bus shelter, but I do not think an area can be "indoor" without being "enclosed." The issue of whether a place is "indoor" or "enclosed" presents certain problems. For example, do you wish to include such places as the portion of parking ramps that are above ground, portions that are below ground, bus shelters, stadiums with retractable roofs, or "shopping malls" that have open areas?

We can try to define "enclosed" or "indoor" or both or include or exclude these items as "public places" or "places of employment." However, because I think that it is extremely difficult to either describe or list every place as either covered or not covered by a tobacco prohibition, you may wish to direct that the Department of Commerce promulgate rules on this issue. Otherwise, it seems likely that a place that was not contemplated will unintentionally be either covered or not covered by the prohibition.

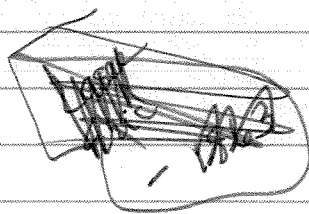
3. Please note that I included a definition of "employment" in this redraft because I discovered that "employment" and "place of employment" were already defined for purposes of all of ch. 101. See s. 101.01 (5) and (11). Please review these definitions in current law as well as s. 101.123 (1) (aj) and (dj) in this draft.
4. I left in the provision that allows a certain percentage of hotel and other lodging rooms to be designated as allowing tobacco products. OK?
5. The added language concerning inhaling and exhaling in the definition of "using tobacco products" seemed redundant to me. I have included it but it should be taken out unless there is a scenario where a person can inhale and exhale from a lighted cigarette or other smoking equipment and without carrying it.
6. I repealed s. 101.123 (8) (c) because I really don't think tort liability is at issue under this statute. If any of the interested parties disagree, please let me know.
7. I have drafted it so only persons in charge of businesses are subject to the penalties. Persons in charge of places that are not businesses would not be subject to these penalties. I also have exempted them from the default forfeiture under s. 939.61.

Mary Gibson-Glass
Senior Legislative Attorney
Phone: (608) 267-3215

This redraft does not include a separate definition of "at-home day care site" because your proposed definition, *i.e.*, "a site licensed by the state and operated for profit by any person in a private residence to provide care and supervision for 4 to 8 children under the age of 7 for less than 24 hours a day," is already included in the broader definition of "day care center" under current law. Specifically, "day care center," as currently defined, includes a facility operated for compensation by a state-licensed provider that provides care and supervision for 4 or more children under 7 years of age for less than 24 hours a day. See ss. 48.65 (1) and 49.136 (1) (b) and (d), stats. As such, the current definition already includes a day care center operated in a private residence for 4 to 8 children. Accordingly, the proposed definition is duplicate and unnecessary.

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1. delete chewing tobacco
2. add "guest" for lodging rooms
3. eliminate business owner concept
4. redo ^{provision} defin of "public access"
5. fines → forfeitures



Gibson-Glass, Mary

From: Briganti, Sarah
Sent: Monday, March 05, 2007 4:07 PM
To: Gibson-Glass, Mary
Subject: RE: LRB 0077/5

Mary,

We have discussed the fine vs. forfeiture matter further and would like the penalty structure (pp 12-13) to be a forfeiture in an effort to avoid making criminals out of business owners.

Thanks,

Sarah